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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 377th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 4 May 1999, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.377/Add.1.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Initial report of Venezuela (continued) (CAT/C/16/Add.8)

Conclusions and recommendations of the Committee

1. At the invitation of the Chairman, the members of the Venezuelan delegation resumed their places at the Committee table.

2. The CHAIRMAN invited the Country Rapporteur to read out the conclusions and recommendations adopted by the Committee on the initial report of Venezuela.

3. Mr. GONZÁLEZ POBLETE (Country Rapporteur) read out the following text:

"1. The Committee considered the initial report of Venezuela (CAT/C/16/Add.8) at its 370th, 373rd and 377th meetings, held on 29 and 30 April and 4 May 1999 (CAT/C/SR.370, 373 and 377), and adopted the following conclusions and recommendations:

A. Introduction

2. Venezuela ratified the Convention on 29 June 1991. It made the declarations provided for under articles 21 and 22 on 21 December 1993, and has not formulated any reservations or additional declarations.

3. Venezuela is also a State party to the Inter-American Convention to Prevent and Punish Torture.

4. The initial report was submitted with several years' delay and does not provide sufficient information on the practical application of the Convention. The Committee appreciates the assurance given by the State's representative that these shortcomings will be overcome and that the next report will be submitted on time and in the appropriate form.

5. A large and well-qualified delegation was present for the introduction of the report. The head of delegation updated and elaborated on it in his statement and through documents made available to the members of the Committee; responses were given to members' observations and questions. This procedure facilitated a more detailed examination, a better understanding of the report, and a frank and constructive dialogue, for which the Committee is grateful.

B. Positive aspects

6. In a declaration of principle, the head of the delegation expressed his Government's determination to be increasingly strict in the area of human rights.

7. The Code of Penal Procedure, which will enter into force shortly, contains very positive provisions that make good the deficiencies of the existing Code of Criminal Procedure; these deficiencies are identified as being highly conducive to the practice of torture and to shortcomings in its investigation and punishment. The full implementation of the new provisions should contribute to the eradication of torture in Venezuela.

8. The Government intends to submit for approval by the Legislature a Bill to Prevent and Punish Torture and Cruel, Inhuman or Degrading Treatment or Punishment, in order to give effect to the provisions of the Convention in domestic law.

9. The state of emergency in force since 1994 has been terminated in the frontier districts and the restrictions on constitutional guarantees have accordingly been removed.

10. The Act intended to combat violence against women and the family has entered into force; and the Organizational Act for the Protection of Children and Adolescents has been approved, and will enter into force next year. Both laws are intended to improve the protection of two particularly vulnerable social sectors who frequently fall victim to discrimination, abuse or cruel, inhuman or degrading treatment.

11. Training initiatives have been taken for law enforcement and prison personnel and have been developed with support from foundations and non-governmental organizations (NGOs); these are described in the part of the report relating to article 10 of the Convention.

12. The Public Prosecutor's Office has taken the initiative of organizing a national programme of workshops to acquaint medical professionals with recent scientific developments in the investigation of torture, in particular torture that leaves no visible or obvious marks.

C. Factors and difficulties impeding the application of the Convention

13. The marked contrast between the extensive legislation on matters addressed by the Convention and the reality observed during the period covered by the report would appear to indicate insufficient concern on the part of the authorities responsible for ensuring the effective observance of the Convention.

D. Subjects of concern

14. The high number of cases of torture and cruel, inhuman or degrading treatment which have occurred since the Convention's entry into force; they have been perpetrated by all the State security bodies.

15. The failure of the competent organs of the State to fulfil their duty to investigate complaints and punish those responsible, who generally enjoy impunity; this encourages repetition of the conduct in question. Not until the report was submitted was the Committee informed

of the imposition of administrative penalties, but it has not been informed of any judicial conviction for the offence of torture.

16. The continued existence in the Penal Code, the Armed Forces (Organization) Act and the Code of Military Justice of provisions exempting from criminal responsibility persons who act on the basis of due obedience to a superior; these provisions are incompatible with both article 46 of the Constitution and article 2, paragraph 3, of the Convention.

17. The non-existence of effective procedures for monitoring respect for the physical integrity of detainees in prisons, both civilian and military.

18. The overcrowding in prisons, where capacity is exceeded by over 50 per cent, the lack of segregation of the prison population, the fact that almost two thirds of prisoners are awaiting trial and the endemic violence rampant in Venezuelan jails mean that prisoners are permanently subjected to forms of inhuman or degrading treatment.

E. Recommendations

19. The prompt consideration, discussion and approval of the Bill relating to torture, whether it takes the form of a separate law or is incorporated in the provisions of the Penal Code.

20. The legislation in question must provide for the hearing and trial in the ordinary courts of any charge of torture, regardless of the body of which the accused is a member.

21. During the consideration and discussion of the Bill relating to torture, the Executive and the Legislature should request and bear in mind the opinions of national NGOs for the defence and promotion of human rights, whose experience in looking after victims of torture and cruel, inhuman or degrading treatment may help to perfect this legal initiative.

22. In the process of drafting a new Constitution a provision should be included which grants constitutional status to human rights treaties ratified by the State and their self-executing nature, as has been recognized in the decisions of the Supreme Court of Justice.

23. In addition, the new Constitution, through such provisions as may appear appropriate, should strengthen the legal conditions for the protection of personal security and integrity and for the prevention of practices that violate such security and integrity.

24. In connection with article 3 of the Convention, which stipulates that a person may not be expelled, returned or extradited to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, the Committee considers that, for the purposes of the improved consideration of the advisability of applying this provision to a particular case, it would appear

appropriate for questions of passive extradition to be considered at two instances, a procedure which characterizes the Venezuelan judicial system.

25. On the same question, it is recommended that the State should regulate procedures for dealing with and deciding on applications for asylum and refugee status which envisage the opportunity for the applicant to attend a formal hearing and to make such submissions as may be relevant to the right which he invokes, including pertinent evidence, with protection of the characteristics of due process of law.

26. Repeal of rules providing for exemption from criminal responsibility on the grounds that the person concerned is acting in due obedience to a superior. Although these rules are contrary to the Constitution, in practice they leave open to judicial interpretation provisions which are incompatible with article 3, paragraph 2, of the Convention.

27. Continue the human rights training initiatives for State law enforcement officials and prison personnel, and extend them to all police and security forces.

28. Establish a governmental programme aimed at the physical, psychological and social rehabilitation of torture victims."

4. Mr. CEDEÑO (Venezuela) thanked the Committee members for considering the report and the presentation made by the Venezuelan Minister of Justice the previous week. He reiterated the firm intention of the Venezuelan Government to meet all its international commitments, and in particular those relating to human rights. His Government would note with great interest the concerns voiced in the conclusions and recommendations.

5. The delegation of Venezuela withdrew.

The meeting was suspended at 3.15 p.m. and resumed at 3.30 p.m.

Third periodic report of Italy (CAT/C/44/Add.2) (continued)

6. At the invitation of the Chairman, the members of the Italian delegation resumed their places at the Committee table.

7. Mr. MORENO (Italy) introduced his delegation's replies to the questions raised in the Committee by stating, in response to concerns expressed by the Chairman, that major changes had occurred in areas relevant to the Convention, notably irregular and clandestine mass migrations which had frequently given rise to real emergencies. The fact that, nevertheless, there had been no increase in the number of cases of ill-treatment of foreigners might be attributed in part to the preventive approach that had been adopted through awareness-raising and provision of information to members of the police forces. In short, racial discrimination and intolerance on the part of the police, and in places of detention where a substantial increase had occurred in the number of foreign inmates, did not appear to be a problem.

8. Mr. CITARELLA (Italy), in reply to a question from Mr. El Masry, said that, if the Italian Government had not yet fully attained its stated objective of complying with the recommendation of the Committee and the provisions of the Convention by incorporating the crime of torture into national criminal legislation, it was because of the contradiction between existing legislation, which provided for the prosecution of any injury inflicted on a detained person, and the Convention, which provided for punishment only if torture was inflicted on a person for certain purposes. It appeared, however, that that conflict had been resolved.

9. Mr. PIERANGELINI (Italy), replying to another question put by Mr. El Masry, said that any law enforcement officer executing an arrest warrant was required immediately to inform the suspect, both orally and in writing, of his right to designate a lawyer, to inform his relatives of his arrest and to refuse to answer questions.

10. In reply to the Chairman's question, a total of 18 reception centres existed to accommodate 3,000 newly arrived illegal or clandestine migrants, who remained for a maximum duration of 30 days during which their identity was established and expulsion procedures were prepared; the process was often hampered by the presentation of forged documents and false statements. Such reception centres in no way resembled prisons and, under law, residents were granted all necessary assistance and afforded full respect for their dignity and the freedom to contact people from outside the premises, to brief lawyers and see ministers of various religions and to communicate by mail or telephone; all documents were translated into a language comprehensible to the person in question.

11. Mr. MORENO (Italy), on the subject of the special commission of inquiry in Somalia, said that, as reflected in the Commission on Human Rights resolution (E/CN.4/1999/L.89) of 22 April 1999, Somalia had effectively had no government, judiciary or police since 1993. Consequently, while the Italian Government agreed with the suggestion of Amnesty International, it had not been possible to carry out the necessary investigations on the ground. The report of the government commission chaired by Professor Ettore Gallo, former President of the Constitutional Court of Italy, confirmed the findings of the administrative inquiries carried out by General Vannucchi, in accordance with which State sanctions, pertaining to the administrative sphere, had been taken against four officers and one non-commissioned officer, and military sanctions, as provided for by army regulations, against four officers and three non-commissioned officers by the Ministry of Defence. Those sanctions, which did not concern members of the army against whom criminal proceedings were being taken, related to the cases of Aden Aboukar Ali, tortured with electric cables, the rape of a Sowali girl, and the video tape of the weekly magazine "Panorama". Other cases raised by members of the Committee were still under investigation; the Gallo Report had concluded that it was unlikely that Moha Mohamed had lost his eye as a result of ill-treatment by Carabinieri of the Tuscany Division.

12. He welcomed the positive view expressed by one Committee member of the special tests taken by members of the police, which were being extended to all forces in charge of public order. Additional tests were taken by individuals entrusted with special missions such as peacekeeping.

13. Mr. MARCUSO (Italy) said that the problem of overcrowding in prisons had been alleviated by the construction between 1972 and 1979 of 78 new facilities, bringing the total capacity to 48,000 for a current prison population of 50,117. New legislation provided for an increase to 2,000 in the total number of social workers, educational personnel and civil officers in penal institutions. Meanwhile, steps were being taken to reduce the number of inmates, under legislation on the lines of the Simeone-Saraceni Law, providing for the release of prisoners serving short sentences or HIV-positive prisoners, while the possibilities for working inside prisons were being increased. Ordinary prisoners were permitted four regular contacts per month with their families, with an additional two for good behaviour.

14. Mr. MORENO (Italy), referring to the comment that foreigners applied more willingly to NGOs than to the public authorities, said that his Government welcomed the mediation of NGOs in investigating complaints of illegal acts. NGOs frequently worked in collaboration with police forces to combat criminal organizations exploiting prostitution. The Italian authorities welcomed the increasing role of NGOs in the field of human rights and their collaboration with the public bodies responsible for offering assistance and for combating criminal networks.

15. Mr. PIERANGELINI (Italy), on the subject of the legal provisions on identification, said that with a view to countering illegal activities, any police officer could request a person, whether of Italian or foreign nationality, to identify himself.

16. Mr. MANCUSO (Italy) said that, except in very exceptional circumstances (no more than 50 cases per year), any person taken into custody had the right of immediate access to his lawyer. The maximum delay, based on a reasoned order, was five days, and the judge must interrogate the arrested person within a maximum time limit of 96 hours from the time of arrest, in the presence of his lawyer.

17. Mr. MORENO (Italy) said that, owing to the nature of the rules governing dual Italian and Argentinian nationality, it had proved difficult to establish a correct channel for dealing with the matter of persons with dual nationality who had disappeared in Argentina. Italian criminal jurisdiction extended to all cases in which Italian nationals had been victims of serious injuries, and especially of homicide, in any part of the world, and criminal proceedings had long since been instituted by the Rome Tribunal in regard to such cases. Those proceedings had not so far yielded positive results because the Argentine authorities had turned down all requests for assistance by the Italian judges on the grounds that the cases under examination in Italy had already been decided in Argentina (principle of nec bis in idem). However, the judges had heard evidence from a large number of Argentine and Italian citizens, including many of the "Mothers of the Plaza de Mayo".

18. Mr. MANCUSO (Italy), referring to the case of Grace Patrick Akpan, who had been charged with defamation of police officers, said that, in the public interest and for historical and practical reasons, offences committed against members of the police force or other public officers entailed more serious consequences than comparable offences committed against a private citizen. In the former case, proceedings were instituted ex officio.

19. Mr. PIERANGELINI (Italy) attributed the delay in delivering a final judgement in the case of Salvatore Marino, who had died in a police station in 1985, to the fact that, under the three-level system of jurisdiction, an appeal to the Court of Cassation could entail the annulment of all prior judicial proceedings. The Court of Cassation had ordered a retrial in 1997.

20. Mr. MORENO (Italy) said that a series of seminars on the medical aspects of torture and injuries, organized by Italian regional medical associations, would be held in different parts of the country from September 1999.

21. Pending enactment of the bill on torture, non-specific rules governing redress, compensation and rehabilitation in cases of torture or ill-treatment were being applied. As a general principle, the culprit was personally responsible for remedying the consequences of his acts. However, public structures with which he was associated could also be held responsible for the civil consequences of crimes. In the "Uno bianca" case, the Ministry of the Interior had been required to compensate the victims of unlawful acts carried out by members of the Bologna police force. There was also a tendency to grant more substantial damages in cases of unjust detention. A branch of Parliament had recently approved a bill raising the ceiling for such damages from 100 million to 1,000 million lire (equivalent to about US$ 600,000).

22. He assured the Committee of Italy's conviction that full compliance with the letter and spirit of the Convention called for a continuous and frank exchange of views and committed collaboration.

23. Mr. EL MASRY (Country Rapporteur) said that a document circulated by the delegation to the Committee had listed 66 persons as being of "unknown nationality". What exactly was meant by that term?

24. He also asked for clarification of what was meant by an "offence against the State religion".

25. He understood that Italy had relaxed the regulations governing censorship of prisoners' correspondence. Communications with, for example, the Council of Europe human rights bodies and the United Nations Human Rights Committee were exempted from censorship. Perhaps the authorities would consider extending freedom of correspondence to communications with the Committee against Torture.

26. Mr. MORENO (Italy) said that illegal immigrants frequently destroyed their identity documents in order to create confusion and avoid expulsion to their country of origin. They were therefore described as being of "unknown nationality".

27. Mr. CITARELLA (Italy) said that a circular suspending censorship of communications with the European Commission on Human Rights and the European Court of Human Rights had recently been issued. As soon as it returned to Italy, the delegation would take steps to ensure that freedom of correspondence was extended to communications with the Committee.

28. Mr. MANCUSO (Italy) said that "offences against the State religion" had become obsolete since the Constitutional Court's decision some years

previously that Italy had no State religion. All religions were equal before the law and the same penalties were applicable to offences against them.

29. Mr. MAVROMMATIS noted that illegal immigrants were allowed to stay in reception centres for a maximum of 30 days. What happened if an immigrant had applied for asylum and the proceedings continued for several months?

30. Mr. PIERANGELINI (Italy) said that the 30-day limit did not apply to refugees or asylum seekers. Specific legal provision had been made for persons whose status was pending.

31. Mr. CITARELLA (Italy) said that foreigners who had filed an application for refugee status or asylum enjoyed freedom of movement pending a decision on their application.

32. The CHAIRMAN invited the delegation to return later in the session to hear the Committee's conclusions and recommendations.

33. The delegation of Italy withdrew.

The public part of the meeting rose at 4.20 p.m.